

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TIMOTHY HOLDEN and KEVA
HOLDEN,

Plaintiffs,
v.
Civil No. 05-10057-BC
Honorable David M. Lawson
Magistrate Judge Charles E. Binder

COUNTY OF SAGINAW, CITY OF
SAGINAW, SAGINAW POLICE
DEPARTMENT, DET. MARK LIVELY,
A. GEORGE BEST, II, AUTO OWNERS
INSURANCE COMPANY, MR. McMARTIN,
MR. WASEK, MICHAEL THOMAS,
MICHAEL DAWAN, DIANE FROST, DET.
SGT. VANBUREN, OFFICER JAMES
ROBINSON, LT. MALLETTTE, DET. PAUL
BERG, DET. ROBERT RUTH, DET. JAMES
VONDETTE, DET. JAMES MASSEY,
and DET. JAMES A. VANTS,

Defendants.

**ORDER ADOPTING IN PART MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AND MOTION TO DISMISS**

This matter is before the Court on a motion to dismiss by the defendants Saginaw County, Michael Thomas, and George Best II and a motion for summary judgment by Charles McMartin, Clare Wasek, and Michael Dwan. The complaint incorrectly names Michael Dwan as Michael Dawan. The motions were referred to United States Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b) and E.D. Mich. LR 72.1. The magistrate judge issued an amended report on June 30, 2005 recommending that the plaintiffs' claims be dismissed for raising duplicate claims against Saginaw County, Michael Thomas, and George Best II, dismissed in Case No. 04-10359. In case No. 04-10359, the Court adopted a recommendation of the magistrate judge and dismissed

claims without prejudice against Saginaw County, Michael Thomas, and George Best II alleging they filed false and fraudulent charges, used false witness testimony, gave false information to the local media, and authorized an illegal search. In so ordering, the Court agreed with the magistrate judge that it was appropriate to abstain from the claims until criminal proceedings against the plaintiff Timothy Holden concluded. Here, the plaintiffs make the same allegations without alleging that proceedings against Mr. Holden have concluded. In the same report and recommendation, the magistrate judge recommended the Court grant the motion to dismiss by Charles McMartin, Clare Wasek, and Michael Dwan. The magistrate judge suggests that the complaint fails to state a claim against these defendants.

The plaintiff's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

The magistrate judge further recommends that the Court dismiss claims against Diane Frost and Auto Owners Insurance Company for failure to state a claim because they are similarly situated with defendants McMartin, Wasek, and Dwan and the complaint makes similar allegations against these five defendants. Auto Owners Insurance Company employs Frost along with McMartin, Wasek, and Dwan. The plaintiff alleges that Auto Owners Insurance Company suspected the plaintiff, Timothy Holden, of making fraudulent claims, Frost made false statements to a police detective, and the individual defendants were grossly negligent for not disclosing that Dwan made a false fire report. Frost and Auto Owners Insurance Company did not file a dispositive motion.

In the Sixth Circuit, it is well established that “a district court may not *sua sponte* dismiss a complaint where the filing fee has been paid unless the court gives the plaintiff the opportunity to amend the complaint.” *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999). In this case, the report and recommendation of the magistrate judge notified the plaintiffs that the claims against Frost and Auto Owners Insurance Company were lacking. The plaintiffs took no steps to file objections, request to amend, or otherwise defend their complaint following this notice. Therefore, the Court finds that dismissal of the claims against Frost and Auto Owners Insurance Company is proper.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation is **ADOPTED**.

It is further **ORDERED** that the motion to dismiss [dkt # 4] by Saginaw County, Michael Thomas, and George Best II is **GRANTED**.

It is further **ORDERED** that the motion for summary judgment [dkts # 18,19] by Charles McMartin, Clare Wasek, and Michael Dwan is **GRANTED**.

It is further **ORDERED** that the plaintiff’s claims by or against Saginaw County, Michael Thomas, and George Best II are **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that the plaintiff’s claims by or against Charles McMartin, Clare Wasek, Michael Dwan, Diane Frost, and Auto Owners Insurance Company are **DISMISSED**.

It is further **ORDERED** that the matter is referred to the magistrate judge under the present order for general case management as to the remaining portions of the complaint in accordance with this opinion and order.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 22, 2005

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means or first class U.S. mail on August 22, 2005

s/Tracy A. Jacobs _____
TRACY A. JACOBS